

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY 04 APR 14 PM 1:03
REGION 7
901 N. 5th STREET
KANSAS CITY, KANSAS 66101
ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

In the Matter of

DWAYNE NELSON
St. Louis, Missouri

Respondent

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Docket No. TSCA-07-2004-0178

CONSENT AGREEMENT AND FINAL ORDER

Introduction

Prior to the filing of a complaint in this matter, the parties have agreed to the settlement of an administrative cause of action for the assessment of civil penalties under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), in accordance with the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, found at 40 C.F.R. Part 22. Pursuant to 40 C.F.R. § 22.13(b), it is the intent of the parties to simultaneously commence and conclude this proceeding by the issuance of this Consent Agreement and Final Order.

The Complainant, by delegation from the Administrator of the United States Environmental Protection Agency (EPA), is the Chief, Radiation, Asbestos, Lead & Indoor Programs Branch, EPA, Region 7. The Respondent is Dwayne Nelson, 4523 Lewis Place, St. Louis, Missouri 63115.

Complainant's Allegations

Complainant has reason to believe that Respondent has violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Subpart F - Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property ("Disclosure Rule"), which was promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d.

Specifically, Complainant alleges:

Count 1

1. Respondent is, and at all times referred to herein, a "person" within the meaning of TSCA.
2. For all periods of time relevant to the violation alleged herein, Dwayne Nelson owned a residential property located at 4931 Alcott, St. Louis, Missouri (the "Property").
3. The Property was constructed prior to 1978.
4. The Property is "target housing" as defined by 40 C.F.R. § 745.103.
5. In or around January 1999, Respondent entered into a rental agreement (the "Contract") with Tasha Johnson for the lease of Respondent's Property for residential use.
6. As a result of the Contract described in Paragraph 5 above, Dwayne Nelson became the "lessor" and Tasha Johnson became the "lessee," as those terms are defined by 40 C.F.R. § 745.103.
7. Tasha Johnson subsequently moved into the Property along with her children, which included a one-year-old.
8. Pursuant to 40 C.F.R. § 745.107(a)(1), before the lessee is obligated under any contract to lease target housing, the lessor of target housing must provide the lessee with an EPA-approved lead hazard information pamphlet.
9. Respondent did not provide an EPA-approved lead hazard information pamphlet to Tasha Johnson prior to being obligated under the rental Contract described in Paragraph 5 above.

10. Respondent's failure to provide an EPA-approved lead hazard information pamphlet to Tasha Johnson prior to being obligated under the rental Contract described in Paragraph 5 above is a violation of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA.

CONSENT AGREEMENT

1. For the purposes of this proceeding, Respondent admits that Complainant has jurisdiction to bring this action pursuant to the statutory and regulatory provisions cited above, and neither admits nor denies Complainant's factual allegations above.

2. Respondent waives his right to contest Complainant's allegations above, and his right to appeal the Final Order accompanying this Consent Agreement.

3. Respondent and Complainant agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

4. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of Respondent's knowledge, he is presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart F - Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property ("Disclosure Rule").

5. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty in the amount of Five Hundred Dollars (\$500) to be paid in four equal payments of One Hundred Twenty Five Dollars (\$125) each, pursuant to the payment schedule contained in Paragraph I of the Final Order.

6. Respondent understands that his failure to timely pay any portion of the penalty stated in Paragraph 5 above may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the rate determined by the Secretary of the Treasury (currently one

percent (1%) per annum for the period January 1, 2004, through December 31, 2004) on the unpaid balance until such civil penalty and any accrued interest are paid in full. A late handling charge of \$15 will be imposed after 30 days and an additional \$15 will be charged for each subsequent 30-day period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

Final Order

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 *et seq.*, and based upon the information set forth in the Consent Agreement accompanying this Final Order, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Five Hundred Dollars (\$500) to be paid in four equal payments of One Hundred Twenty Five Dollars (\$125) each. The first payment shall be due within forty-five (45) days of the effective date of the Final Order; the second payment shall be due on or before June 1, 2004; the third payment shall be due on or before September 1, 2004; and the fourth payment shall be due on or before December 1, 2004. Failure to submit any of the required payments by the respective due date will result in the entire remaining balance becoming immediately due and payable, along with any costs, handling charge, penalties, and accumulated interest. All payments shall identify the Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and remitted to:

EPA-Region 7
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251.

2. A copy of the check must be sent simultaneously to each of the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 7
901 N. 5th Street
Kansas City, Kansas 66101; and

Deanna Smith
Office of Regional Counsel
U.S. Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101.

3. Respondent and Complainant shall bear their own costs and attorneys' fees incurred
as a result of this matter.

RESPONDENT:
DWAYNE NELSON

Date: 4-25-04

By: 

Dwayne Nelson

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 4/9/04

By: 

Lynn M. Slugatz
Acting Branch Chief
Radiation, Asbestos, Lead & Indoor Programs Branch

Date: 4/13/04

By: 

Kent Johnson
Senior Assistant Regional Counsel

IT IS SO ORDERED. This Final Order shall become effective immediately.

Date: Apr. 14, 2004


Robert L. Patrick
Regional Judicial Officer

IN THE MATTER OF Dwayne Nelson, Respondent
Docket No. TSCA-07-2004-0178

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to
Attorney for Complainant:

Kent Johnson
Senior Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by U.S. Certified Mail,
Return Receipt Requested, to:

Dwayne Nelson
4523 Lewis Place
St. Louis, Missouri 63115

Dated: 4/14/04


Kathy Robinson
Regional Hearing Clerk